

February 3, 2011

William Clark
President
Association of Legal Professionals
c/o City Attorney's Office
200 E. Santa Clara Street
San Jose, CA 95113

RE: Response to ALP Information Request

Dear Bill:

We are in receipt of the Association of Legal Professionals' (ALP) information request dated January 25, 2011, related to the negotiations on a successor agreement between the City and ALP. Below is the information you requested.

1. "(a) Is the City Attorney a representative of the City along with the City Manager with respect to the bargaining process with the Association as he was last year?"

The City of San Jose's Employer-Employee Relations Resolution (<http://www.csj.gov/oer/CPM/CPM211EmployerEmployeeResolution39367.pdf>) defines the "Municipal Employee Relations Officer" to be the City's "principal representative in matters of employer-employee relations designated pursuant to Section 21." Section 21(a) makes it clear that the "City Council hereby designates the City Manager as Municipal Employee Relations Officer and as such he/she shall be the City's representative in all matters of employer-employee relations, with authority to meet and confer in good faith on matters within the scope of representation, including wages, hours and other terms and conditions of employment."

Council Appointees have powers and authorities granted by the City Charter. For example, the City Manager does not have a decision making role in the hiring or dismissal of an employee under the appointing authority of another Council Appointee. However, regardless of the Appointing Authority, the City of San Jose is the employer and the City Manager is responsible for labor negotiations with all bargaining units, including ALP.

1. **“(b) If the City Attorney is not a representative of the City, why has he been excluded from the process, when under the Charter, he is our sole Appointing Authority?”**

The make-up of the City's negotiating team is the decision of the City Manager and her staff, including the use of outside consultant assistance at the bargaining table. Although the City's team often includes a staff person from an office or department where a majority of the employees are represented by a particular bargaining unit, this is not always the case. As we mentioned in our meeting on January 24, 2011, we had requested that a management representative of the City Attorney's Office be part of the City's negotiation team. The City Attorney declined to have someone at the bargaining table. However, there will still be coordination with the City Attorney regarding any possible operational impacts of proposals submitted in the negotiation process that are within the scope of bargaining.

We have communicated your concern that a representative of the City Attorney's Office is not on the City's negotiation team.

2. **“We have been informed that the Director of Employee Relations has a conflict of interest and therefore has been excluded from bargaining with our Association. In our experience, a conflict of interest normally results in a complete exclusion of the person from the process. We hereby request a description of the conflict along with the parameters of the Director's exclusion from the negotiating process that involve ALP. If the Director is involved in some way in our negotiations, either during discussions with the City Council in Closed Session, or otherwise, or is involved in direction or supervision of the City negotiations, we would like to understand the parameters of that involvement.”**

The City Attorney has advised that there is a legal conflict because the Director of Employee Relations's spouse is a Senior Deputy City Attorney, which is a classification represented by ALP on matters concerning wages, hours and other terms and conditions of employment. The Director does not negotiate with or enter into tentative agreements with ALP.

3. **“The Association has requested that the negotiation sessions with the City be open to the public. We believe that the public would be served by having access to the process and have a greater understanding of the issues that face the City with respect to its employees that provide vital legal service.”**

As we indicated via the attached email on January 25, 2011, the City is open to having negotiations between the City and ALP be open to the public. Please see the enclosed email exchange between the City and ALP.

4. **“We have made several requests that communications from ALP and requests for information be posted on the City's website. These requests have not always been honored. To the extent necessary, we request that the City post the UC Berkeley Study and Rutgers study of public employee compensation that dispute the contention that public employees are overcompensated.”**

The City does not have a practice of posting information on the City's website solely at the request of any individual or organization, including bargaining units. It would be akin for the City to ask a bargaining unit to post something on its own website if they had one.

However, ALP is not precluded from posting information via the creation of its own website, subject to the limitations placed on the use of City time or resources in doing so, as several bargaining units representing City employees have already done.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina Donnelly", with a long, sweeping horizontal line extending to the right.

Gina Donnelly
Deputy Director of Employee Relations

Enclosure

From: Clark, William
Sent: Tuesday, January 25, 2011 8:43 AM
To: Donnelly, Gina
Cc: Doyle, Brian; Dodson, Michael; Mercado, Marco; 'Charles Sakai'
Subject: RE: ALP Negotiations

Ms Donnelly,
Thank you.

William Clark,
ALP

From: Donnelly, Gina
Sent: Tuesday, January 25, 2011 8:35 AM
To: Clark, William
Cc: Doyle, Brian; Dodson, Michael; Mercado, Marco; 'Charles Sakai'
Subject: ALP Negotiations

Mr. Clark-

We wanted to follow up on our meeting yesterday and the interest ALP expressed in having the negotiations between the City and ALP be public. Since ALP feels strongly about it, we are open to the idea and we would like to discuss this issue further to see if we can reach a common understanding and agreement on a public negotiations process (logistics, etc.) We will ensure that this is the City's first agenda item for our next scheduled meeting Monday, January 31, 2011, at 2:30 PM.

Please feel free to contact me should you have any questions.

Thank you,

Gina Donnelly
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